

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRUZ ARELLANO-ORTIZ,

Petitioner,

v.

FRANCISCO J. QUINTANA, WARDEN,

Respondent.

Case No. 2:23-06290-ADS

ORDER DENYING MOTION TO
DISMISS, GRANTING PETITION, AND
TRANSFERRING MOTION FOR
MODIFICATION OF SUPERVISED
RELEASE

I. INTRODUCTION

Pending before the Court is a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 (“Petition”) by Petitioner Cruz Arellano-Ortiz (“Petitioner”) an inmate proceeding pro se and in the custody of the Federal Bureau of Prisons (“BOP”) in Victorville, California. (Dkt. No. 1.)¹ The Petition claims the BOP failed to apply earned time credits (“ETCs”) under the First Step Act of 2018 (“FSA”). (Id. at 3–4.)

¹ All citations to electronically-filed documents are to the CM/ECF pagination.

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Respondent Warden Francisco J. Quintana (“Respondent”) filed a Motion to Dismiss the Petition (the “Motion”) arguing that Petitioner failed to exhaust his claim, and that he is statutorily barred from receiving the ETCs. (Dkt. Nos. 6, 12.) Petitioner opposed the Motion. (Dkt. No. 9.) Respondent did not file a reply. On January 4, 2024, the Court held a hearing on the Motion (the “Hearing”), at which Petitioner, counsel for Respondent, a representative for the BOP, and a BOP employee translating for Petitioner appeared. (Dkt. Nos. 14, 16.) Both Petitioner and Respondent filed a Consent to Proceed Before a United States Magistrate Judge. (Dkt. Nos. 17, 17-1.) As such, the parties voluntarily consent to have a United States Magistrate Judge conduct all further proceedings in this case, decide all dispositive and non-dispositive motions, and order the entry of final judgment, pursuant to 28 U.S.C. § 636(c). (Id.)

Pursuant to the Court’s review of the Petition (Dkt. No. 1), the Motion (Dkt. Nos. 6, 12), Petitioner’s opposition (Dkt. No. 9), the parties’ statements at the Hearing, and public records,² the Court finds Petitioner is entitled to habeas relief. For the reasons discussed below, the Court denies Respondent’s Motion, grants the Petition, and transfers the oral motion for modification of supervised release under 18 U.S.C. § 3583(e)(2).

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² Where necessary, the Court takes judicial notice of the public records. See FED. R. EVID. 201(b)(2) (“The court may judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) (“[A] court may take judicial notice of its own records in other cases, as well as the records of an inferior court in other cases.”); Harris v. Cnty. of Orange, 682 F.3d 1126, 1132 (9th Cir. 2012) (holding that a court may take judicial notice of undisputed matters of public record).

1 **II. BACKGROUND**

2 Petitioner claims that the BOP has wrongly denied him ETCs under the FSA
3 because of an immigration detainer. (Dkt. No. 1 at 3–4.) He alleges that, on
4 April 27, 2022, the BOP awarded him ETCs and adjusted his expected release date to
5 December 2, 2022. (Dkt. No. 9 at 1.) Petitioner provided supporting documentation.
6 (Id. at 3.) He further alleges that he asked BOP officials “numerous times for a copy of
7 the alleged final order of removal signed by the immigration judge” to no avail. (Dkt.
8 No. 1 at 4.)

9 In response, Respondent filed a Motion to Dismiss that does not address
10 Petitioner’s allegations but instead makes two arguments why the Petition should be
11 dismissed. Specifically, Respondent argues that Petitioner failed to exhaust his
12 administrative remedies, because he has not raised his claim through the BOP’s
13 administrative remedy process. (Dkt. No. 6 at 6–7.) Respondent also argues that
14 Petitioner is statutorily barred from applying ETCs due to a Final Order of Removal
15 issued against him on March 7, 2023,³ and thus his release date is January 12, 2024,
16 assuming he earns all available Good Time Credits (“GTCs”), as distinguished from
17 ETCs.⁴ (Dkt. No. 6 at 3, 5; Dkt. No. 12-2.) Respondent, however, does not appear to
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19 ³ The FSA provides that “[a] prisoner is ineligible to apply time credits under
20 subparagraph (C) if the prisoner is the subject of a final order of removal under any
provision of the immigration laws (as such term is defined in section 101(a)(17) of the
Immigration and Nationality Act (8 U.S.C. 1101(a)(17))).” 18 U.S.C. § 3632(d)(4)(E)(i).

21 ⁴ With the Motion, Respondent attaches and relies on a declaration by Yolanda Sanchez,
22 a BOP employee, for the BOP’s calculation of various aspects of Petitioner’s sentence,
23 including his eligibility to earn FSA ETCs, his earned GTCs, his projected release date,
24 the existence of an immigration detainer issued by the Department of Homeland
Security, the existence of the Final Order of Removal, and information regarding
administrative exhaustion. (Dkt. No. 6 at 9–12, Sanchez Decl. Exs. A–B.) On

1 dispute Petitioner's allegation that, in April 2022, his release date was December 2,
2 2022, based on ETCs, which he did not receive.

3 Recognizing it must accept Petitioner's allegations as true for purposes of ruling
4 on the Motion, the Court held the Hearing to discuss the obvious issue: on what basis
5 did the BOP continue to detain Petitioner from December 2, 2022, the expected release
6 date, to March 7, 2023, the date the Final Order of Removal was issued.⁵ (Dkt. No. 14.)
7 During the Hearing, Respondent confirmed that the March 7, 2023, Final Order of
8 Removal is the only removal order against Petitioner, and that in 2022 his release date
9 was December 2, 2022. Respondent explained, however, that the BOP's policy in 2022
10 was that the law barred inmates subject to immigration proceedings (like Petitioner at
11 the time) from receiving FSA time credits. According to Respondent, this policy
12 changed in February 2023, at which point the BOP's position was that only inmates
13 subject to a final order of removal were ineligible for ETCs. Recognizing that the Final
14 Order of Removal against Petitioner here was not issued until March 2023, Respondent
15 conceded that Petitioner's ETCs should have applied in February 2023, and he should
16 have been released. Both Respondent and the BOP admitted they had incorrectly relied
17 on Petitioner's immigration detainer as the basis for not applying Petitioner's ETCs and
18 continuing to detain him.

19 The parties then discussed possible remedies at the Hearing, given the
20 government's error and Petitioner's unauthorized detention. Respondent stated that the
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22 December 21, 2023, after ordered to do so by the Court, Respondent filed a Notice of
23 Errata correcting the Motion to include the Final Order of Removal issued against
24 Petitioner that was not initially attached to the Motion. (Dkt. Nos. 6, 11, 12, 12-2.)

⁵ The Court has ordered a transcript of the Hearing, which should be available on the
docket as soon as it is prepared.

1 Court should order Petitioner's immediate release. Respondent also suggested that the
2 Court construe the Petition as a motion for modification of supervised release under
3 18 U.S.C. § 3583(e)(2) and transfer the case to the sentencing court, here the Western
4 District of Oklahoma. See United States v. Arellano-Ortiz, 5:19-cr-00004-F-2, Dkt. No.
5 211 (W.D. Okla. Oct. 17, 2019) (sentencing Petitioner to 70 months imprisonment and
6 four years of supervised release). Respondent noted that such a motion would be
7 available to Petitioner during his term of supervised release, and that it could potentially
8 reduce that term. Petitioner stated that, because the BOP violated his rights, he wants
9 whatever he is entitled to, including pursuing a motion for modification of his
10 supervised release. The Court took the matter under submission.

11 **III. DISCUSSION**

12 Based on their statements at the Hearing, Respondent and the BOP agree
13 Petitioner should be released from BOP's custody immediately. Although these
14 statements obviously suggest Respondent has abandoned its Motion, the Court
15 nevertheless addresses the arguments therein for the avoidance of doubt. In addition,
16 the Court addresses the issue of a motion for modification of supervised release and
17 transfer.

18 **A. Exhaustion Requirement is Waived**

19 The Court exercises its discretion to waive the exhaustion requirement. "Federal
20 prisoners are required to exhaust their federal administrative remedies prior to bringing
21 a petition for a writ of habeas corpus in federal court." Martinez v. Roberts, 804
22 F.2d 570, 571 (9th Cir. 1986) (per curiam); see also Ward v. Chavez, 678 F.3d 1042, 1045
23 (9th Cir. 2012). The exhaustion requirement applicable to habeas petitions under
24 Section 2241 is a prudential requirement. See Singh v. Napolitano, 649 F.3d 899, 900

1 (9th Cir. 2011) (per curiam) (as amended); see also Ward, 678 F.3d at 1045 (“As a
2 prudential matter, courts require that habeas petitioners exhaust all available judicial
3 and administrative remedies before seeking relief under § 2241.”). As the exhaustion
4 requirement is judicially created, the failure to exhaust does not deprive a federal court
5 of jurisdiction. See Brown v. Rison, 895 F.2d 533, 535 (9th Cir. 1990), overruled on
6 other grounds by Reno v. Koray, 515 U.S. 50 (1995). Courts also have discretion to
7 waive the exhaustion requirement where pursuing administrative remedies would be
8 futile, the administrative remedies are inadequate or not efficacious, irreparable injury
9 would result, or the administrative proceedings would be void. See Ward, 678 F.3d
10 at 1045 (citations omitted); Laing v. Ashcroft, 370 F.3d 994, 1000 (9th Cir. 2004)
11 (citation omitted). A “key consideration” in exercising such discretion is whether
12 “relaxation of the requirement would encourage the deliberate bypass of the
13 administrative scheme.” Id. (quoting Montes v. Thornburgh, 919 F.2d 531, 537 (9th
14 Cir. 1990)).

15 Here, the Court exercises its discretion to waive the administrative exhaustion
16 requirement. Requiring Petitioner to fully exhaust his claims would result in a serious
17 risk of irreparable injury and futility. Relaxation of the requirement would not
18 encourage the deliberate bypass of the administrative scheme in the unique
19 circumstances here. It is clear Petitioner has been detained long past his expected
20 release date, whether that was December 2, 2022, or sometime in February 2023.
21 Moreover, Respondent’s incorrect calculation of Petitioner’s current release date is
22 January 12, 2024, just one week away and at which point any possible relief would be
23 moot. Thus, the Court declines to dismiss the Petition based on a failure to exhaust.
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1 **B. Applicability of FSA ETCs**

2 Respondent's only other argument in the Motion contests the Petition
3 substantively by asserting that Petitioner is ineligible to apply FSA ETCs because he is
4 subject to a Final Order of Removal. (Dkt. No. 6 at 3, 5.) As noted above, Respondent
5 changed its position at the Hearing, recommending the Court order Petitioner's
6 immediate release. Indeed, the FSA's text is unambiguous: "A prisoner is ineligible to
7 apply time credits under subparagraph (C) if the prisoner is the subject of a final order
8 of removal under any provision of the immigration laws (as such term is defined in
9 section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)))."
10 18 U.S.C. § 3632(d)(4)(E)(i) (emphasis added).

11 There is no dispute here that the Final Order of Removal against Petitioner is
12 dated March 7, 2023. Respondent does not contest that, in 2022, Petitioner's expected
13 release date was December 2, 2022. Respondent explained the BOP's policy in 2022 did
14 not apply ETCs for inmates subject to immigration proceedings, despite the statute's
15 plain text. Respondent explained further that the BOP's policy changed in
16 February 2023 to align with the statute's text. Respondent conceded that Petitioner's
17 ETCs should have applied and he should have been released in February 2023, as there
18 was no final order of removal against him at that time. Both Respondent and the BOP's
19 representative admitted that they had incorrectly relied on Petitioner's immigration
20 detainer to continue to detain him.

21 In light of this record, Petitioner has shown that he had a vested liberty interest
22 in his ETC credits which, if applied, would have resulted in his release, possibly as early
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1 as December 2, 2022.⁶ As those credits were not then applied, and the failure to apply
2 them was not supported by a notice or opportunity to respond, and for the reasons
3 stated at the Hearing, Petitioner is entitled to habeas relief. His further detention by the
4 BOP was and is unlawful; indeed, Respondent and the BOP effectively conceded as
5 much at the Hearing. The Court, therefore, denies the Motion, grants the Petition, and
6 orders Petitioner's immediate release from BOP custody.

7 **IV. MOTION FOR MODIFICATION OF TERM OF SUPERVISED RELEASE**

8 The parties' statements at the Hearing raised the additional issue of a motion for
9 modification of supervised release to remedy the government's error. Because
10 Respondent admits Petitioner was wrongfully incarcerated due to the BOP's failure to
11 apply ETCs, Respondent suggested the Court construe the Petition as a motion to
12 modify Petitioner's term of supervised release under 18 U.S.C. § 3583(e)(2), and to
13 transfer the case to the sentencing court. Respondent explained that this could
14 potentially result in a reduction of Petitioner's supervised release term, and Respondent
15 noted that the option to move to modify supervised release remained available to
16 Petitioner during that term. The Court asked Petitioner whether he wanted to pursue a
17 motion to modify his supervised release, and he stated that he did. As Petitioner put it:
18 he wants whatever he is entitled to because the BOP violated his rights.

19 The Court construes the parties' statements at the Hearing as an oral motion to
20 modify Petitioner's term of supervised release pursuant to 18 U.S.C. § 3583(e)(2) and
21 finds the matter should be transferred to the Western District of Oklahoma. A district
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23 ⁶ The Court need not, and does not, determine whether Petitioner should have been
24 released on December 2, 2022, or in February 2023 when BOP policy changed to
conform with the FSA's text.

1 court may transfer an action to any other district court where it might have been
2 brought, for the convenience of the parties and in the interest of justice. See 28 U.S.C. §
3 1404(a).

4 The section 3583(e)(2) motion may be brought the Western District of
5 Oklahoma. Despite the Final Order of Removal against Petitioner, he remains subject to
6 his term of supervised release. See United States v. Ramirez-Sanchez, 338 F.3d 977,
7 980 (2003) (explaining that “deportation does not extinguish a term of supervised
8 release”). Section 3583(e)(2) permits the sentencing court to modify Petitioner’s
9 supervised release after considering certain enumerated factors, including his period of
10 over-incarceration. See 18 U.S.C. § 3583(e)(2); United States v. Johnson, 529 U.S. 53,
11 60 (2000) (“The trial court, as it sees fit, may modify an individual’s conditions of
12 supervised release.”); see also Reynolds v. Thomas, 603 F.3d 1144, 1148 (9th Cir. 2010)
13 (explaining court could consider sixteen-month period of over-incarceration as favoring
14 supervised release reduction under § 3583(e)) abrogated on other grounds by Sester v.
15 United States, 566 U.S. 231 (2012); Gonzalez v. Doerer, No. CV 23-02679-ODW-
16 DFM, 2023 WL 6164473, at *3 (C.D. Cal. Aug. 7, 2023) (similarly explaining sentencing
17 court could consider over-incarceration period in reducing supervised release term,
18 where respondent conceded petitioner was eligible for application of time credits).
19 Accordingly, this matter may be brought in the Western District of Oklahoma. See
20 Arellano-Ortiz, 5:19-cr-00004-F-2, Dkt. No. 211 (W.D. Okla. Oct. 17, 2019) (sentencing
21 Petitioner to four years of supervised release).

22 Transferring the matter would also be convenient for the parties and in the
23 interest of justice. Transferring this matter to the sentencing court to consider whether
24 to reduce Petitioner’s supervised release term would expedite the parties’ intentions.

1 Petitioner made clear that he will pursue modifying his supervised release, and
2 Respondent suggested it to remedy the government's admitted error in over-
3 incarcerating him. Based on Petitioner's documented release date of December 2, 2022,
4 the BOP unlawfully detained him by as much as thirteen months. Given the record here,
5 transferring would be for the parties' convenience and clearly in the interest of justice.
6 See Johnson, 529 U.S. at 60 ("There can be no doubt that equitable considerations of
7 great weight exist when an individual is incarcerated beyond the proper expiration of his
8 prison term.").

9 For these reasons, the Court finds Petitioner's oral motion to modify his term of
10 supervised release under 18 U.S.C. § 3583(e)(2) should be transferred to the Western
11 District of Oklahoma. Given Petitioner's imminent release from BOP custody, the Court
12 orders Petitioner to notify the Western District of Oklahoma of his new address as soon
13 as possible. Failure to do so may result in the dismissal of the case for failure to
14 prosecute.!

15 **V. CONCLUSION AND ORDER**

16 IT IS THEREFORE ORDERED that:

- 17 (1) the Motion (Dkt. Nos. 6, 12) is DENIED;
- 18 (2) the Petition (Dkt. No. 1) is GRANTED and the BOP is ordered to
19 immediately release Petitioner from custody;
- 20 (3) this action is to be TRANSFERRED to the Western District of Oklahoma to
21 resolve Petitioner's oral motion to modify his term of supervised release
22 under 18 U.S.C. § 3583(e)(2); and
- 23 (4) Judgment shall be entered consistent with the foregoing.
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1 As noted above, Respondent and the BOP agree that immediate relief is
2 warranted here, and they do not object to the relief granted in this Order in this unique
3 circumstance.

4 Dated: January 5, 2024

5 /s/Autumn D. Spaeth
6 THE HONORABLE AUTUMN D. SPAETH
7 United States Magistrate Judge
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